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May 10, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St., SW
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

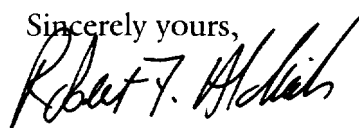
NOTICE OF EX PARTE
PRESENTATION

Re: CC Docket No. 96-128 (remand of inmate service issues)

Dear Ms. Salas:

As requested by the staff, we are providing on behalf of the Inmate Calling Service Providers Coalition some additional information (attached) regarding the correct implementation of the ban on subsidies and discrimination in Section 276(a), (b)(1)(B), and (b)(2)(C) of the Communications Act with respect to inmate telephone services.

Sincerely yours,



Robert F. Aldrich

cc: Yog Varma
Deena Shetler
Tamara Preiss
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INMATE TELEPHONE SERVICE: CORRECTION OF ILEC SUBSIDIES AND DISCRIMINATION

To date, the FCC has not implemented the prohibition in Section 276 of the Communications Act against Bell companies' subsidizing and discriminating in favor of their own "inmate telephone service." 47 U.S.C. § 276(a), (b)(1)(B), (C), (d). Under the Payphone Order and related Commission rulings implementing the Payphone Order (which also extended the prohibition on subsidies and discrimination to non-Bell incumbent local exchange carriers ("ILECs")), only the equipment used to provide inmate telephone service is classified as "nonregulated." The inmate telephone service itself is classified as a regulated "operator service." *Local Exchange Carriers Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs*, AAD 97-9 *et al.*, *Memorandum Opinion and Order*, FCC 99-197, released August 6, 1999, ¶11. Consequently, the costs and revenues associated with providing inmate telephone services are not segregated from costs and revenues associated with regulated local exchange services. As a result, the Commission has continued to allow the very subsidies and discrimination that Section 276 is supposed to prevent.

These subsidies and discrimination have grossly distorted the competitive environment for inmate telephone service. In essence, the ILECs are able to burden their regulated entities with the most costly and risky components of inmate telephone service, such as billing and collection, while their nonregulated inmate service entities function as mere equipment subcontractors for the regulated ILEC.

Among the inmate service revenues and costs that are commingled with regulated exchange service costs under these FCC decisions are:

- A. *All local and toll service revenues from ILECs' inmate telephone service.* While interLATA calls may be handled by other carriers, 90% of calls from jails are local or intraLATA calls handled by the ILEC.
- B. *All costs for ILEC network usage (i.e., local and toll usage charges).* While independent inmate service providers must pay these charges, ILECs' nonregulated entities do not pay usage charges because the charges are billed directly (as collect call charges) by the regulated ILEC to the called party.
- C. *LIDB call validation charges.* Independent service providers must pay these charges, but ILEC nonregulated entities do not pay them because they are not responsible for billing inmate service calls.
- D. *The cost of equipment to be installed at jails, both payphones and call control equipment.* While the ILEC nonregulated entity initially incurs these costs as nonregulated equipment costs, it can simply recoup these costs from the ILEC regulated side by charging the regulated side a call processing fee.
- E. *Commissions paid to the confinement facility on calls handled by the ILEC.* These are paid by the ILEC either directly or by passing them through the nonregulated entity.
- F. *Billing and collection charges.* While independent inmate service providers must pay these charges to the ILEC, the ILEC nonregulated entity does not pay these costs because it is not responsible for billing inmate service calls.
- G. *Unbillables and uncollectables (bad debt) and related costs.* Uncollectables are several times higher for inmate service than for regulated exchange or toll services. The ability to collect each dollar is dramatically impacted by Code 50 rejects (on calls to CLEC accounts), other unbillable numbers, actual fraud perpetrated by inmates, uncollectables from impoverished inmate families, and other risks. Independent inmate service providers must absorb these losses *and* the associated costs of network usage, validation, and billing for uncollectable calls. The ILEC nonregulated side is not burdened by these losses and costs because it is not responsible for billing and collecting the revenues or paying the associated costs.

As a result of this commingled cost structure, the ILEC can continue to subsidize its inmate telephone service because there is no separation of costs and no separate accounting for the high losses from unbillables, uncollectibles, and fraud that are suffered by all inmate service providers. Without cost accountability, there is no disincentive for the ILEC to

offer high commissions for inmate service accounts -- ILECs are frequently among the highest bidding entities for inmate service contracts – and **the independent ICS provider suffers a distinct and permanent competitive disadvantage**. In addition, there is little or no incentive for ILECs to be proactive in actively managing uncollectables and fraud, since they have the ability to spread the losses over their entire base of ratepayers. Regulated ILEC rate payers are absorbing all of the excess costs and losses associated with inmate service.

The ILEC can also continue to discriminate in favor of its inmate service because the regulated services and information used for the benefit of its inmate services (such as information about the accounts of customers receiving collect calls from inmates) are not required to be made available to independent inmate service providers.

The Remedy

The Commission must require the ILEC to classify their inmate telephone *service*, including all the costs and revenues discussed above, on the “nonregulated” side of their accounts. Regulated service charges for network usage, validation, and the like must be treated as nonregulated costs in accordance with Computer III principles. ILECs must handle their billing relationship for inmate telephone service in the same manner as independent service providers. That is, the ILEC must segregate billing records for inmate service calls from billing records for regulated local exchange service, so that uncollectable inmate service revenues are clearly identified and accounted for on the nonregulated side of the ILEC accounts.

In addition, any services provided by the regulated side of the ILEC to *or for the benefit of* the nonregulated inmate telephone service must be available on nondiscriminatory terms and conditions. For example, if the ILEC uses information about regulated service accounts to determine whether an inmate service call is billable or if a pattern of fraud exists, that same information must be made available on the same terms and conditions to independent inmate service providers. If the ILEC policy is to cut off regulated local service for non-payment of collect charges for inmate telephone service, that same policy must be applied to collect charges for calls billed on behalf of independent inmate service providers.